

## REMARKS

### Claims

By the instant Amendment, claims 11 to 15, and 24 to 27 have been amended, and new claims 29 to 33 have been entered. Claims 11 to 15 and 17 to 33 are in the case.

As amended, claim 12 is now an independent claim, and new independent claim 29 has been added, bringing the total number of independent claims to four. A Fee Transmittal in respect of the extra independent claim is attached hereto.

The amendment of claim 11 necessitated amendment of claim 12 and additional claim 29. Amendments in claims 14, 15, 26, and 27 are minor and relate to claim dependencies. Minor amendments in claims 12, 13, 24, and 25 have been made to further clarify the claimed invention. New claims 30 and 32 parallel claim 14, and new claims 31 and 33 parallel claim 15. No new matter has been entered.

### Claim Objections

Claims 12 and 13 were rejected because of informalities. In view of the amendments presented herein, these objections are rendered moot.

### Claim Rejection - 35 USC § 102(e)

It was the Examiner's opinion that claim 11 was anticipated by Reiley (U.S. Patent No. 6,610,091). Referring to Figure 4 and column 5 line 65 to column 6 line 67 of Reiley, the Examiner suggested that Reiley discloses a spinal facet cap having a shim portion 325 and an alignment portion 315, 310 along an edge of the shim portion 325. Insofar as the rejection might apply to claim 11 as amended herein, the rejection is respectfully traversed for the following reasons.

From Figure 4 of Reiley, and the corresponding description (column 5 line 65 to column 6 line 67), it can be seen that the alignment portion 315, 310 is a cup member (315) and a stem (310). Reiley clearly teaches that the prosthesis requires the stem 310 to hold it in place, as the prosthesis is installed following resection of the superior facet (i.e., partial removal of bone of the lower portion of the facet joint). That is, the stem 310 is inserted into bone after partial removal of bone.

In sharp contrast, the alignment portion in preferred embodiments of the invention does not have a stem as taught in Reiley. Applicants have therefore amended claim 11 to recite that the alignment portion "consists of at least one boss disposed on said shim portion".

It is submitted that claim 11 as amended herein is patentable over Reiley. Withdrawal of the rejection and reconsideration are respectfully requested.

### **Allowable Subject Matter**

Applicants thank the Examiner for allowing previous claims 19 to 28, and for indicating the allowability of claims 12 to 15, 17 and 18 if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In view of the instant claim amendments, it is believed that all claims are in condition for allowance.

It is submitted that the instant application is in condition for allowance and Applicants respectfully request early action in this regard. Please charge any fee that may be required, for which no cheque is enclosed, to Deposit Account No. 17-0110.

Should the Examiner wish to discuss this Amendment, a telephone call to the undersigned agent at 613-533-6000 ext. 77483 would be welcomed.

Respectfully submitted,



Stephen J. Scribner  
Reg. No, 44,452

Date: 21 June 2004

PARTEQ Innovations  
Biosciences Complex, Suite 1625  
Queen's University  
Kingston, Ontario K7L 3N6  
CANADA  
Tel: 613-533-2342  
Fax: 613-533-6853